FARAD CONTINUATION SHEET.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR.

WRIT PETITION NO.5696/2005

Nagpur Mahanagar Palika Karmachari Sanghatna and others

...Versus...

The Municipal Commissioner and others

Office Notes, office Memoranda of Coram appearances, Court's orders or directions and Registrar's order.	Court's or Judge's order

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CORAM: **B.P. DHARMADHIKARI, J.**
DATED : **19.12.2005.**

1. Heard Advocate Shri B.M.Khan for petitioners and Advocate Shri M.V. Samarth for respondents.

2. Learned Member of Industrial Court has by impugned judgment dated 20.8.2005 dismissed the Complaint (ULPN) No.1623/1997 filed by present petitioners on the ground of bar under section 59 of M.R.T.U. & P.U.L.P. Act. In paragraph no.13 of the impugned judgment, learned Member of Industrial court

has found that earlier some complaints were filed by the complainants and all those complaints were dismissed in default.

3. Advocate Shri Khan submits that dismissal of complaints in default is not contemplated under section 59 of M.R.T.U. & P.U.L.P. Act.

4. Advocate Shri Samarth on the other hand states that from all complaints, only few were dismissed in default. He submits that though the learned Member has used the provisions of section 59, still tenor of entire observations go to show that the learned Member of Industrial Court has applied concept of res judicata and section 11 of C.P.Code in the matter. He contends that the order does not deserve to be interfered with only because section 59 has been mentioned. He further states that recognized union had unsuccessfully filed similar complaints espousing same cause and those complaints were dismissed. He invites attention to the orders passed by Industrial Court dismissing such complaints and also to the order of this Court upholding such dismissal by Industrial court. He further states that the complaint of recognized union is still pending. He

states that in earlier writ petition before this court grievance was made by employer that a roving attitude in this respect has been adopted by complainants and the union in effort to obtain favourable orders somehow from the Industrial Court. He states that in view of the bar contemplated because of the judgment of the Hon'ble Apex Court in case of Shramik Uttarsh Sabha...Versus...Raymond Woolen Mills Ltd. & Ors. reported in 1995, Vol.1, CLR, page 607, the complaints filed by present petitioners have been rightly dismissed. According to him there is no case made out for interference with extraordinary jurisdiction.

5. Advocate Shri Khan on the other hand states that the petitioners did not get any opportunity to point out that the concept of res judicata will not be applicable in labour jurisprudence. He further states that there is no recognized union in existence and this Court therefore cannot for the first time accept challenge in view of case of Shramik Uttarsh Sabha...Versus...Raymond Woolen Mills Ltd. & Ors. (Supra) as necessary facts are lacking.

6. After hearing both sides, I find that the

objection raised by present employer in written statement before Industrial Court was mentioning section 59 of the M.R.T.U. & P.U.L.P. Act, therefore the learned Member has mentioned the same while passing impugned order. Provisions of section 59 reveals that section 59 itself has no application as it has not been shown that earlier proceedings under Central Act or State Act were dismissed.

7. In such circumstances, the matter is remanded back to the Member of Industrial court for fresh decision in this respect after giving opportunity to parties to argue the issue in relation to res judicata. The parties state that some evidence in relation to the bar flowing from the case of Shramik Uttarsh Sabha...Versus...Raymond Woolen Mills Ltd. & Ors. (Supra) about the role of recognized union will be required to be led before the Industrial Court. Parties are at liberty to lead such evidence only in relation to such bar before the Industrial court.

8. As the complaint is of the year 1997, the learned Member of Industrial Court is directed to decide the complaint as early as possible and in any case on or

before 31st July, 2006.

9. The impugned order dated 20.8.2005 is accordingly quashed and set aside. Rule made absolute in above terms. No costs.

JUDGE

SSW